

COPY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LUCERNE TEXTILES, INC.,

Civil Action No. 14 Civ. 1097 (SAS)(RLE)

Plaintiff,

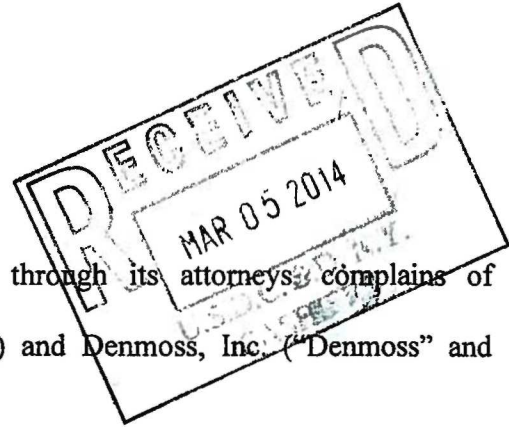
FIRST AMENDED COMPLAINT

-against-

JONES APPAREL GROUP USA, INC.  
and DENMOSS, INC.

Defendants.  
-----X

Plaintiff, Lucerne Textiles, Inc. ("Lucerne"), through its attorneys, complains of defendants, Jones Apparel Group USA, Inc. ("Jones") and Denmoss, Inc. ("Denmoss" and collectively with Jones, "Defendants"), as follows:



JURISDICTION AND PARTIES

1. This action arises under the Copyright Laws of the United States, 17 U.S.C. § 101, et seq. and, particularly, under 17 U.S.C. § 106 and § 501, and is to redress the infringements of copyrights. This Court has jurisdiction over the subject matter of this claim pursuant to 28 U.S.C. § 1338.
2. Venue properly lies in this Judicial District pursuant to 28 U.S.C. § 1400(a) and 28 U.S.C. § 1391(b). Process properly issues from this Court pursuant to Rule 4 of the Federal Rules of Civil Procedure.
3. Plaintiff is a New York corporation with offices and a principal place of business at 519 Eighth Avenue, New York, New York 10018.

4. Jones, upon information and belief, is a foreign corporation authorized to do business within the State of New York, with offices and a place of business at 1129 Westchester Avenue, White Plains, New York 10604.

5. Jones, upon information and belief, is a manufacturer and distributor of apparel, and has sold in the United States and within this district, apparel which infringes Lucerne's copyright as set forth hereinafter.

6. Denmoss, upon information and belief, is a New York corporation with offices and a principal place of business at 225 West 37<sup>th</sup> Street, 17<sup>th</sup> Floor, New York, New York 10018.

7. Denmoss, upon information and belief, is, among other things, engaged in the business of producing and selling fabric, and has sold in the United States and within this district, fabric which infringes Lucerne's copyright as set forth hereinafter.

8. Defendants, upon information and belief, transact business within this district, derive substantial revenue from intrastate and interstate commerce and have committed tortious acts within this district and also without this district having injurious consequences within this district, and defendants are otherwise within the jurisdiction of this Court.

#### CLAIM I - COPYRIGHT INFRINGEMENT

9. In 200, Lucerne created an original work of art identified as "Rosette." A copy of Rosette is attached hereto as Exhibit "1."

10. The said work of art is wholly original and is copyrightable subject matter under the laws of the United States. Lucerne secured statutory copyrights in said original design.

11. Lucerne has duly complied in all respects with the provisions of the Copyright Law of the United States, and has secured the exclusive rights and privileges in and to the said design, and Lucerne thereupon duly requested and has received from the Register of Copyrights a Certificate of Registration, VA 1-799-190. A copy of the Copyright Registration is annexed hereto as Exhibit "2".

12. Lucerne published its Rosette design on January 14, 2009.

13. All copies of said work of art have been published only by Lucerne, and all copies of it have been printed, reproduced, and published in strict conformity with the provisions of the Copyright Law of the United States.

14. At all relevant times since its creation, Lucerne has been, and is now, the sole proprietor of all rights, title, and interest in the copyright and is the sole owner of the right to exploit the copyright of the exclusive design.

15. Upon information and belief, at some time presently unknown, after Lucerne first published its copyrighted design defendants infringed Lucerne's copyright by causing to be manufactured, offering for sale, and selling, without Lucerne's consent, textiles and apparel made with textiles woven with a design which is copied from Lucerne's copyrighted work of art. A photograph of one such infringing garment is attached hereto as Exhibit "3".

16. Defendants' design is clearly copied from Lucerne's design.

17. Defendants' design is substantially similar to the copyrighted design.

18. Lucerne has no adequate remedy at law.

**WHEREFORE**, Lucerne demands judgment:

(a) That defendants, their officers, agents, servants, employees, attorneys and all parties in active concert or participation with them be enjoined from infringing Lucerne's copyrighted design, including, but not limited to, manufacturing, vending, weaving, printing, distributing, selling, displaying, promoting, or advertising fabric or garments or other products incorporating a design copied from the copyrighted design, or by causing and/or participating in manufacturing, printing, vending, distributing, offering for sale, selling, displaying, promoting, or advertising by others pursuant to 17 U.S.C. § 502.

(b) That defendants be required to deliver up for destruction all infringing copies of Lucerne's copyrighted design in their possession or under their control, whether in the form of fabric or apparel, or other products incorporating the infringing design, and to withdraw all advertising or promotional material bearing a copy of such copyrighted design, and print rollers, screens matrices, and the like utilized in the manufacture of infringing textiles pursuant to 17 U.S.C. § 503.


(c) That defendants be required to pay Lucerne such damages as Lucerne has sustained as a consequence of their infringement of Lucerne's copyrighted design, and to account for all gains, profits, and advantages derived by them from their infringements, including profits on all sales of fabrics and goods which embody any copy of the copyrighted design, pursuant to 17 U.S.C. § 504.

(d) That defendants be required to pay to Lucerne the costs of this action, including its attorney's fees.

(e) That Lucerne have such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York  
February 27, 2014

Respectfully submitted,  
SILLS CUMMIS & GROSS P.C.  
Attorneys for Plaintiff

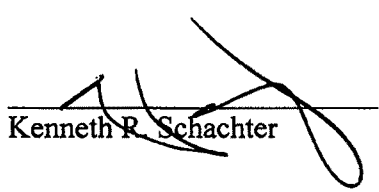
By:   
Kenneth R. Schachter  
kschachter@sillscummis.com  
30 Rockefeller Plaza  
New York, New York 10112  
(212) 643-7000

DEMAND FOR JURY TRIAL

Lucerne hereby demands a trial by jury.

Respectfully submitted,  
SILLS CUMMIS & GROSS P.C.  
Attorneys for Plaintiff

By:

  
Kenneth R. Schachter

# **Exhibit 1**







# **Exhibit 2**

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*  
Register of Copyrights, United States of America

Registration Number  
VA 1-779-190

Effective date of  
registration:  
June 27, 2011

### Title

Title of Work: Rosette

### Completion/Publication

Year of Completion: 2009

Date of 1st Publication: January 14, 2009

Nation of 1st Publication: United States

### Author

■ Author: LUCERNE TEXTILES

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

### Copyright claimant

Copyright Claimant: LUCERNE TEXTILES

519 8TH AVENUE, 9TH FLOOR, NEW YORK, NY, 10018, United States

### Rights and Permissions

Organization Name: LUCERNE TEXTILES

Address: 519 8TH AVENUE

9TH FLOOR

NEW YORK, NY 10018 United States

### Certification

Name: VALERIE CLIVE

Date: June 27, 2011

Correspondence: Yes

# **Exhibit 3**

